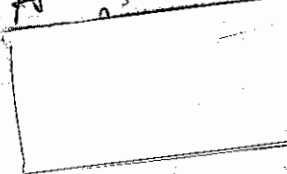




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31

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A.NO.223 OF 2004

APPELLANT

Branch Manager, United India
Insurance Company Limited, Raigarh.

Vs

RESPONDENTS

Sewa Bai & others.

M. A.NO. 224 OF 2004

APPELLANT

Branch Manager, United India
Insurance Company Limited, Raigarh.

Vs

RESPONDENTS

Sanjh Kumar & others

M. A.NO.225 of 2004

APPELLANT

The United Insurance Company
Limited, Raigarh.

Vs

RESPONDENTS

Bhagwati Bai & others

M. A.NO.226 of 2004

APPELLANT

Branch Manager, United India
Insurance Company Ltd., Raigarh.

Vs

RESPONDENTS

Dilaso Bai and others

POST FOR PRONOUNCEMENT OF JUDGMENT: 10/7/2007

Sd/-
Dhirendra Mishra
Judge

24

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A.NO.223 OF 2004

APPELLANT

Branch Manager, United India Insurance Company Limited, Branch Office, Opposite Gopi Talkies, Raigarh (C.G.)

Vs

RESPONDENTS

1. Sewa Bai, widow of Barat Ram, aged 22 years, R/o Village Gersa, P.S. Dharamjaigarh.

2. Minor Parwati, D/o Late Barat Ram through natural guardian mother Sewa Bai widow of Barat Ram. Both are R/o Village Gersa, Tahsil Dharamjaigarh, Distt. Raigarh (C.G.)

Claimants/Applicant No.1 & 2

3. Anup Kumar Agarwal, son of Kishan Agarwal, Occupation- Vehicle Owner, Bazarpara, Patthalgaon, District Jashpurnagar.

4. Chain Singh, son of Roop Sai Sidar, aged about 35 years, Occupation- Driver, R/o Patthalgaon, District Jashpurnagar.

Non-applicants No.1 & 2

M. A.NO.224 OF 2004

APPELLANT

Branch Manager, United India Insurance Company Limited, Branch Office, Opposite Gopi Talkies, Raigarh (C.G.)

Vs

RESPONDENTS

1. Sanjh Kumar, widow of Lagin Singh, aged 22 years.

2. Madho Ram son of Pitar Sidar, aged 55 years.

3. Melo Bai, wife of Madho Ram, aged 50 years.

All residents of Village Gersa, Tah. Dharamjaigarh, Distt. Raigarh (C.G.)

Applicants/Claimants No.1 to 3

4. Anup Kumar Agarwal, son of Kishan Agarwal, Occupation- Vehicle Owner, Bazarpara, Patthalgaon, District Jashpurnagar.

5. Chain Singh, son of Roop Sai Sidar, aged about 35 years, Occupation- Driver, R/o Patthalgaon, District Jashpurnagar.

Non-applicants No.1 & 2

M. A.NO.225 of 2004APPELLANT

The United Insurance Company Limited,
Local Branch Office, The United India
Insurance Company Ltd., infront of Gopi
Talkies, Raigarh (C.G.)

Vs

RESPONDENTS

1. Bhagwati Bai, widow of Laxminarayan alias Narayan, aged about 34 years.
2. Minor Shakuntala, D/o. Late Laxminarayan @ Narayan, aged about 15 years
3. Minor Balram S/o. Late Laxminarayan @ Narayan, aged about 10 years.
4. Minor Savitri D/o. Late Laxminarayan alias Narayan aged about 7 years.

No.2 to 4 through natural guardian mother
Mst. Bhagwati Bai.

All are residents of Purani Basti,
Patthalgaon, Tah. Patthalgaon, Distt.
Jashpurnagar

Claimants/applicant No. 1 to 4.

5. Anup Kumar Agrawal, son of Shri Kishan Agrawal, Occupation-Vehicle owner, Resident of Bazarpara, Patthalgaon, Distt. Jashpur.
6. Chain Singh son of Anjana Sidar, Occupation - Driver, Resident of Bazarpara, Patthalgaon, Tahsil Patthalgaon, Distt. Jashpur.

Non-applicant No. 1 & 2.M. A.NO.226 of 2004APPELLANT

Branch Manager, United India Insurance
Company Ltd., Branch Office, Opposite
Gopi Talkies, Raigarh (C.G.)

Vs

RESPONDENTS

1. Dilaso Bai, widow of Madan Singh (died) Mahra Ram son of Buturam Rathiya, aged 50 years, Residents of Gersa, Tahsil Dharamjaigarh, Distt. Raigarh (C.G.)

APPLICANT/CLAIMANT

2. Anup Kumar Agrawal, son of Shri Kishan Agrawal, Occupation -Vehicle owner, Bazarpara, Patthalgaon, Distt. Jashpurnagar
3. Chain Singh Sidar, Son of Roop Sai Sidar, aged about 35 years, Occupation- Driver, R/o. Patthalgaon, Distt. Jashpurnagar.

Non-applicant No.1 & 2

Present:

Mr. H.B. Agarwal, Sr. Advocate with Mr. Pankaj Agarwal, Advocate for the appellant in all the appeals.

None for respondents/claimants & driver in all the appeals.

Mr. Sanjay Agarwal with Mr. R. Pradhan, Advocate for respondent-Anup Kumar Agarwal in all the appeals.

J U D G M E N T

(Delivered on 10 /07/2007)

Dhirendra Mishra, J

- 1) Misc. Appeal No.223/04 arising out of Claim Case No.34/02 between Seva Bai & another Vs. Anup Agarwal & others; Misc. Appeal No.224/04 arising out of Claim Case No.37/02 between Sanjhkunwar and others Vs. Anup Agarwal and others; Misc. Appeal No.225/04 arising out of Claim Case No.36/02 between Bhagwati Bai and others Vs. Anup Agarwal and others; Misc. Appeal No.226/04 arising out of Claim Case No.33/02 between Dilaso Bai Vs. Anup Agarwal and others are being disposed of by this common judgment, as all these appeals are directed against the claim cases arising out of the accident dated 1.10.1998 involving truck bearing registration number MP26-D-4674, owned by respondent-Anup Kumar Agarwal, driven by respondent-Chain Singh Sidar & insured by the appellant herein for the relevant period and the same also involves a common question of law whether the appellant can be held liable for making payment of compensation for passengers traveling in the goods carriage vehicle being the gratuitous passengers.
- 2) Facts necessary for adjudication of these appeals are that on 1.10.1998 at about 8.30 p.m. respondent-Chain Singh, driving the truck bearing registration number MP26-D-4674, owned by respondent Anup Kumar Agarwal and insured by the appellant herein, met with an accident near Aamapali, while he was going to Dharamjaigarh from Gersa. The truck was carrying limestone. Nine persons were traveling

in the said truck in addition to the driver and cleaner namely Laxminarayan. In this accident Barat Ram, Madan Singh, Lagin Singh & Laxminarayan, cleaner of the vehicle, died. Legal heirs of all these four deceased persons filed separate applications for compensation. The Claims Tribunal in Claim Case No.33/02 awarded a sum of Rs.1,75,000/- for the death of Madan Singh; in Claim Case No.34/02 awarded a sum of Rs.1,75,000/- for the death of Barat Ram; in Claim Case No.36/02 awarded a sum of Rs.1,46,000/- for the death of Laxminarayan, cleaner of offending vehicle and in Claim Case No. 37/02 awarded a sum of Rs.1,75,000/- for the death of Lagin Singh with interest @9% from the date of the application. Owner, driver and the appellant-insurance company were held jointly and severally liable for satisfying the impugned award.

- 3) On the basis of the pleadings of respective parties in all the four claim cases apart from other issues, Issue No.3 & 4 were framed as under:-

"3. Whether on the date of accident on 1.10.1998 non-applicant (Driver) did not possess the valid and effective driving license, if yes, its effect?

4. Whether at the time of accident the vehicle was being used in breach of insurance policy conditions, if yes, its effect?"

- 4) The Claims Tribunal by the impugned award has decided the above issues with a finding that the vehicle was insured vide insurance policy Ex.D-1 and as per terms of the policy the risk of six persons was covered. Placing reliance upon the judgment of the Hon'ble Apex Court in the matter of National Insurance Co. Ltd. Vs. Satpal Singh reported in AIR 2000 SC 235 (Himachal Pradesh) it has been held that in case of limited passengers traveling free, as per condition of the policy, then the same cannot be termed as breach of policy

condition and since the risk of six persons was covered, therefore, insurance company is responsible to satisfy the award.

- 5) Learned counsel for the appellant submits that from the evidence available on record it is evident that the vehicle in question was a goods carriage vehicle and at the time of accident deceased persons were traveling in the said vehicle as gratuitous passengers. As per insurance policy of Ex.D-1 risk coverage was only available to 1+1+4 persons employed in connection with the operation, maintenance and unloading of the motor vehicle, whereas, the deceased persons namely Barat Ram, Lagin Singh & Madan Singh were traveling in the said vehicle as gratuitous passengers and only deceased Laxminarayan was employed in the said vehicle as 'cleaner'. Placing reliance in the matter of *New India Assurance Co. Ltd. Vs. Asha Rani and others* reported in 2003 (2) SCC 223 it is submitted that judgment relied upon by learned claims tribunal in the matter of *Satpal Singh (supra)* has been overruled.
- 6) Reliance is placed in the matters of *Pramod Kumar Agarwal Vs. Mushtari Begum (Smt.) and others* reported in 2004 (8) SCC 667 & *Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy and others* reported in AIR 2003 Supreme Court 1009 and it is contended that carrying passengers for transportation is not contemplated under the Motor Vehicles Act, 1988 (for short 'the Act') and therefore, the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods carriage and insurance company is not liable therefor.
- 7) On the other hand, learned counsel for the respondent-owner submitted that the deceased persons were traveling in the said vehicle as labourers for the purpose of unloading the vehicle. The owner had categorically instructed the driver not to allow passengers in the truck, therefore, if passengers were allowed by the driver that was without permission and against the specific instructions and in

these circumstances it cannot be termed that there was any breach of policy condition by the insured. Reliance is placed on the matters of **Ramesh Kumar Vs. National Insurance Co. Ltd.** reported in AIR 2001 S.C. 3363 & **New India Assurance Company Vs. Satpal Singh** reported in AIR 2000 Supreme Court 235.

- 8) I have heard learned counsel for the parties.
- 9) From the perusal of pleadings in the claim petitions it is seen that legal representatives of the deceased persons have not claimed in any of the petitions that the deceased persons were engaged as labourer in the said vehicle for unloading the goods except in Claim Case No.36/02 wherein it has been pleaded that deceased Laxminaryan was engaged in the said vehicle as 'Cleaner'. Maan Singh, who has examined as AW-1, in Claim Case No.34/02, has stated in Para-1 of his cross-examination that in all nine passengers were travelling in the said matador, no fare was charged by the cleaner and they were going to Dharamjaigarh for witnessing Dusherra. Though Banshiram, who has been examined as AW-3 in this claim petition, has also stated that the driver had engaged them for the purpose of unloading the goods but considering the pleadings of the claim petitions, FIR filed and proved by claimants themselves as Ex.P-2 wherein it is mentioned that they were going from Gersa to Dharamjaigarh for witnessing Dusherra and fare @ Rs.10/- per passenger was recovered by the cleaner Laxminarayan, statement of Banshiram (AW-3) cannot be accepted.
- 10) So far as the submission on behalf of the owner that driver carried passengers disregarding his expressed instructions is concerned, the owner has not averred about any instruction given by him to his driver in this regard, on the contrary, in the reply, facts deposed in the claim petition has been denied, the accident & death of deceased persons in the said accident has also been denied and it has been stated that a false criminal case has been registered against the driver. Thus, in the absence of pleadings, the defence taken by the

respondent-owner in his statement on oath before this Court is clearly an afterthought and the same cannot be accepted. So far as the judgments cited by learned counsel for the respondent owner is concerned, since the law laid down in the matter of Satpal Singh (supra) has already been overruled by the Larger Bench of Hon'ble Supreme Court and the impugned award was passed placing reliance on the overruled judgment of the Hon'ble Supreme Court, therefore, further reliance on the overruled judgment is untenable.

- 11) From the evidence available on record it would be evident that the deceased Barat Ram, Madan Singh & Lagin Singh were traveling in the vehicle as gratuitous passengers, whereas, deceased Laxminarayan was engaged as Cleaner (khalasi) of the truck. From perusal of the insurance policy it is established that the policy was valid for a period from 2.9.1998 to 1.9.1999 and additional premium was paid by the owner to cover the risk of persons employed in connection with the operation and/or maintaining and/or unloading of the motor vehicle i.e. 1+1+4. Thus, risk for the driver, cleaner and four labourers engaged for unloading was covered.

- 12) In the Asha Rani's case it has been held that;

"If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46 of Act 54 of 1994 by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorized representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The objects and reasons of Clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the

purposes of liability under the Insurance Policy. Although sometimes this legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but giving a plain meaning to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions, it is not possible to construe that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and make it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when the vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. Therefore, it is held that in respect of cases under Section 147 prior to its amendment in 1994, the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury".

- 13) In the matter of Devireddy Konda Reddy (Supra) the Hon'ble Apex Court in paragraph 11 of the judgment has held thus,

"11. the inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any



passenger traveling in a goods carriage and the insurer would have no liability therefore."

- 14) In the matter of Pramod Kumar Agrawal (Supra) also judgments cited above have been referred with approval and it has been held that "it was not the intention of the legislature to provide for the liability of the insurer with respect to the passengers, especially gratuitous passengers, who are neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people' and the judgment in the matter of Satpal Singh (supra) stands overruled. .
- 15) In the light of the binding judgments of the Hon'ble Supreme Court, as mentioned hereinabove, I am of the considered opinion that the findings of the claims tribunal in Claim Case No.34/02 between Seva Bai and another Vs. Anup Agarwal and others (M.A. No.223/04); Claim Case No.37/02 between Sanjhkunwar and others Vs. Anup Agarwal and others (M.A. No.224/04) & Claim Case No.33/02 between Dilaso Bai Vs. Anup Agarwal and others (M.A. No.226/04) cannot be sustained and accordingly, it is held that the appellant insurer is not liable to make the payment of compensation and it was the owner who has to make the payment of awarded amount. Therefore, relying on the judgments of the Hon'ble Supreme Court in the matters of Pramod Kumar Agarwal (supra) and National Insurance Co. Ltd. Vs. Baljit Kaur reported in (2004) 2 SCC 1, this Court direct thus:-

'The insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within two months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. The

offending vehicle shall be attached, as a part of the security. If necessity arises, the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of vehicle i.e. respondent Anup Kumar Agarwal shall make payment to the insurer. In case there is any default, it shall be open to the executing court to direct realization by disposal of any other property or properties of the owner of the vehicle.

- 16) However, the finding of the claims tribunal in Claim Case No.36/2002 (M.A.No.225/04) arising out of the death of Laxminarayan, is proper, as in the above case the claimants are the legal representatives of deceased Laxminarayan, who was engaged as Cleaner in the offending truck and the insurance policy covers the risk of the employee employed in connection with maintenance and operation of the vehicle, therefore, the risk of death of Laxminarayan was duly covered and accordingly, the appeal i.e. M.A. No.225/04 filed against the award passed in Claim Case No.36/02 is hereby dismissed.
- 17) In the result, M.A. No.223/04, M.A.No.224/04 & M.A. No.226/04 are partly allowed and the awards passed in these appeals are modified, as above. However, the M.A. No.225/04 filed against the award dated 20.10.2003 is hereby dismissed.

Roshan/-

Sd/-
Dhirendra Mishra
Judge